

ADMINISTRATIVE PANEL DECISION

Association des Centres Distributeurs E. Leclerc - ACD Lec v. Contact Privacy Inc. Customer 0163945792 / Camaara Ford, CarteLeclerc
Case No. D2022-1132

1. The Parties

The Complainant is Association des Centres Distributeurs E. Leclerc - ACD Lec, France, represented by Inlex IP Expertise, France.

The Respondent is Contact Privacy Inc. Customer 0163945792, Canada / Camaara Ford, CarteLeclerc, United States of America.

2. The Domain Name and Registrar

The disputed domain name <carte-leclerc.com> is registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 1, 2022. On April 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 1, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 7, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2022. On April 14, 2022, a third party contacted the Center regarding the claimed unauthorized use of contact details in relation to the disputed domain name. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 3, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on May 9, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a French association and it operates one of the most renowned chain of supermarkets and hypermarkets stores in France under the trademark E LECLERC. The Complainant has about 721 stores in France, located all over the country. The term “Leclerc” refers to the last name of the founder and promoter of the association, Mr. Edouard Leclerc.

The Complainant is the owner of several trademark registrations consist of or contain the word LECLERC, which have been registered in numerous countries all over the world, before the Respondent’s registration of the disputed domain name. Amongst others, the European Union Trade Mark LECLERC No. 002700656 filed on May 17, 2002 and registered on February 26, 2004, and duly renewed since then and the French trademark LECLERC No. 1307790 filed and registered on May 2, 1985 and duly renewed since then.

This disputed domain name <carte-leclerc.com> was registered on March 13, 2022 and resolves to an inactive page. Before being inactive, the disputed domain name contained a web page reproducing the Complainant’s trademarks LECLERC used to impersonate the Complainant and to offer “E. Leclerc Courses” gifted cards.

5. Parties’ Contentions

A. Complainant

The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant argues that the disputed domain name is almost identical to the trademark LECLERC. The mere addition of the French term “carte” (“card” in English) within the disputed domain name does not lessen the inevitable confusion between the disputed domain name and the Complainant’s trademark LECLERC. On the contrary, the association of the trademark LECLERC with the term “carte” increases the risk of confusion as this term refers to the loyalty card “Carte E. Leclerc” and the gift cards “Carte Cadeau E. Leclerc” offered by the Complainant in the course of its activity.

The Respondent has no rights or legitimate interests in respect of the domain Name

The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name with legitimate interests. The Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain name including its trademarks.

The domain name was registered and is being used in bad faith

It is unlikely that the Respondent was unaware of the Complainant’s activities and of the existence and use of the trademarks LECLERC at the time the registration of the disputed domain name was made. The Complainant’s LECLERC supermarket network is well known in France and in several other European countries.

There is no legitimate or fair use of the disputed domain name. The disputed domain name initially resolved to a page reproducing the Complainant’s trademarks LECLERC and therefore impersonating the Complainant, which offered to buy “E. Leclerc Courses” gifted cards. This content, which did not originated

from nor was authorized by the Complainant, was clearly fraudulent, aiming to make the Internet users believe that they were dealing with the Complainant and to frame them in order to collect personal data.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

In the present case, the disputed domain name <carte-leclerc.com> incorporates the words "carte", a hyphen and the LECLERC trademark. As such, the disputed domain name is confusing similar to the Complainant's registered well-known trademark LECLERC. The only difference between the disputed domain name and the LECLERC trademark is the use of the term "carte" and a hyphen.

Furthermore, the addition of the word "carte" to the trademark LECLERC in the disputed domain name, which refers the services offered by the Complainant, does not prevent a finding of confusing similarity.

The Panel finds the first element of the Policy has therefore, been met.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant has to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative". As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In this case, the Respondent is not in any way affiliated with the Complainant, nor has the Complainant authorized or licensed the Respondent to use its trademarks, or to seek registration of any domain name incorporating said trademarks.

The Complainant contends that there is no relationship with the Respondent that gives rise to any license, permit, or other rights to which the Respondent could enjoy such use of any domain name incorporating the Complainant's trademarks.

Moreover, the Panel finds no evidence that the Respondent has used, or has undertaken any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering offer of goods or services.

Likewise, no evidence has been adduced that the Respondent has commonly been known by the disputed domain name; nor, for the reasons mentioned above, is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel therefore finds that the Complaint fulfills the second condition of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

In its Complaint, the Complainant has provided evidence that the website associated with the disputed domain name is used to gain unfair benefit of its trademark.

The registration of the Complainant's trademarks predate the registration of the disputed domain name for several years. The disputed domain name is identical to one of the Complainant's trademark with the addition of the term "carte" that is also related to one of the Complainant's products. Given the stated factors above, the Respondent knew or should have known the Complainant's trademarks in mind when registering the disputed domain name (see WIPO Overview on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)", section 3.2.2).

The Panel finds that the Respondent has registered the disputed domain name attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of the website, and of the services offering on the website.

This disputed domain name was registered on March 13, 2022, and currently resolves to an inactive page. Before that the disputed domain name resolved to a page reproducing the Complainant's trademark LECLERC and impersonating the Complainant, which offered to buy "E. Leclerc Courses" gifted cards. This content, which did not originated from nor was authorized by the Complainant, was clearly fraudulent, aiming to make the Internet users believe that they were dealing with the Complainant and to frame them in order to collect personal data.

In addition the Panel take into account as additional indicia of bad faith the use of an address related to another company when registering the disputed domain name.

Accordingly, this Panel finds that the disputed domain name was registered and is being used in bad faith by the Respondent.

On this basis, the Panel finds that the Complainant has satisfied the third element of the Policy (paragraph 4(a)(iii)).

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <carte-leclerc.com> be transferred to the Complainant.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: May 23, 2020